

NOV. 13. 2006 4:46PM
TO: USPTO

ZILKA-KOTAB, PC

NO. 4737 P. 1

ZILKA-KOTAB

PC
ZILKA, KOTAB & FEECE™

RECEIVED
CENTRAL FAX CENTER
NOV 13 2006

100 PARK CENTER PLAZA, SUITE 300
SAN JOSE, CA 95113

TELEPHONE (408) 971-2573
FAX (408) 971-4660

FAX COVER SHEET

Date: November 13, 2006	Phone Number	Fax Number
To: Examiner Kevin Schubert		(571) 273-8300
From: Kevin J. Zilka		

Docket No.: NAI1P312/01.048.02

App. No: 09/916,607

Total Number of Pages Being Transmitted, Including Cover Sheet: 11

Message:

Please deliver to Examiner Schubert.

Thank you,

Kevin J. Zilka

☐ Original to follow Via Regular Mail ☒ Original will Not be Sent ☐ Original will follow Via Overnight Courier

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES OR IF YOU ENCOUNTER
ANY OTHER DIFFICULTY, PLEASE PHONE Erica
AT (408) 971-2573 AT YOUR EARLIEST CONVENIENCE

November 11, 2006

NOV. 13. 2006 .4:47PM

ZILKA-KOTAB, PC

RECEIVED
CENTRAL FAX CENTER

NO. 4737 P. 6

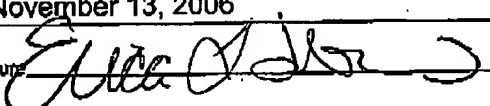
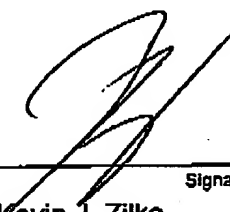
NOV 13 2006

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) NAI1P312/01.048.02	
I hereby certify that this correspondence is being transmitted via facsimile to the Commissioner for Patents, Alexandria, VA 22313-1450 to fax number (571) 273-8300. on <u>November 13, 2006</u> Signature <u></u> Typed or printed name <u>Erica L. Farlow</u>		Application Number <u>09/916,607</u>	Filed <u>07/26/2001</u>
		First Named Inventor <u>Rodney D. Cambridge</u>	
		Art Unit <u>2137</u>	Examiner <u>Schubert, K.</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <u>41,429</u> Registration number _____		 Signature <u>Kevin J. Zilka</u> Typed or printed name <u>(408) 971-2573</u> Telephone number <u>November 13, 2006</u> Date	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

-1-

REMARKS

The Examiner has rejected Claims 1, 3, 5-6, 10, 15-16, 19-20, 25-26, and 38 under 35 U.S.C. 103(a) as being unpatentable over Doub (U.S. Patent No. 6,594,762), in view of Applicant's Admitted Prior Art (Specification, pages 2-3), hereinafter AAPA, in view of Lin (U.S. Patent No. 6,326,891), and in further view of Vance (U.S. Patent No. 5,345,383). Further, the Examiner has also rejected Claims 1, 3, 5-6, 10, 15-16, 19-20, 25-26, and 34-38 under 35 U.S.C. 103(a) as being unpatentable over Doub, in view of AAPA, in view of Lin, and in further view of Henrie (U.S. Patent No. 6,804,699). In addition, the Examiner rejected Claims 29, 31, and 33 under 35 U.S.C. 103(a) as being unpatentable over Doub in view of Lenz (U.S. Publication No. 2001/0053947), in view of Lin, and in further view of Vance. Also, the Examiner has rejected Claims 29, 31, and 33 under 35 U.S.C. 103(a) as being unpatentable over Doub in view of Lenz, in view of Lin, and in further view of Henrie. Applicant respectfully disagrees with such rejections.

With respect to the independent claims, the Examiner has relied on Col. 3, lines 38-41 from the Lin reference to make a prior art showing of applicant's claimed technique "wherein the control unit includes a control unit display, the control unit display being configured to display information associated with the device when it is determined that the device is not within the range of communications of the control unit" (see this or similar, but not necessarily identical language in the independent claims). Applicant's arguments made on page 11, second paragraph, through page 12, first paragraph of Amendment F mailed August 10, 2006 are hereby incorporated by reference.

In the Office Action dated 08/18/06, the Examiner noted that "Lin teaches that the 4 LEDs are used to *indicate when a device is within a security range (darkened) or outside a security range (lightened)*." Further, the Examiner argued "that the 4 LEDs display information." Applicant respectfully disagrees and asserts that the Lin citation merely teaches that "[w]hen a slave transceiver is located within the security range, the related LED is darkened; or it is lightened otherwise" (emphasis added). The mere

-2-

lightening and darkening of an LED with respect to range does not display any information associated with a device, much less meet a technique “wherein the control unit includes a control unit display, the control unit display being configured to display information associated with the device when it is determined that the device is not within the range of communications of the control unit” (emphasis added), as claimed by applicant.

Further, with respect to the independent claims, the Examiner has relied on Col. 6, lines 29-34 from the Vance reference to make a prior art showing of applicant's claimed technique “wherein the device includes a device display, the device display being configured to display information associated with the control unit when it is determined that the device is not within the range of communications of the control unit” (see this or similar, but not necessarily identical language in the independent claims). Applicant's arguments made on page 12, second paragraph, through page 13, first paragraph of Amendment F mailed August 10, 2006 are hereby incorporated by reference.

In the Office Action dated 08/18/06, the Examiner noted that “the same rationale [argued above using the Lin reference] applies” and that “a rejection of independent claim 1 does not require the Vance reference.” Applicant respectfully disagrees. In particular, applicant notes that on page 3, lines 14-16 of the Office action dated 8/18/06, the Examiner relied on Vance to meet applicant's claimed technique. In addition, applicant respectfully asserts that the mere disclosure that a gauge or indicator light indicates an out of range condition when the communication link is diagnosed as faulty, as in Vance, does not teach a device display, much less a technique “wherein the device includes a device display, the device display being configured to display information associated with the control unit when it is determined that the device is not within the range of communications of the control unit” (emphasis added), as claimed by applicant.

In addition, with respect to the independent claims, the Examiner has also relied on Col. 12, lines 8-16 from the Henrie reference to make a prior art showing of applicant's claimed technique “wherein the device includes a device display, the device

-3-

display being configured to display information associated with the control unit when it is determined that the device is not within the range of communications of the control unit” (see this or similar, but not necessarily identical language in the independent claims).

Applicant respectfully asserts that the excerpt from Henrie relied upon by the Examiner merely teaches that “information for identifying and contacting the authorized owner or user is displayed on display device 105 (FIG. 5) of portable computer system 100 when the device is in the disabled (locked) mode of operation” (emphasis added). However, displaying information on a display device for identifying and contacting the authorized owner or user of the display device, as in Henrie, fails to teach a technique “wherein the device includes a device display, the device display being configured to display information associated with the control unit when it is determined that the device is not within the range of communications of the control unit” (emphasis added), as claimed by applicant.

Additionally, with respect to the independent claims, the Examiner has relied on Col. 3, line 19 – Col. 4, line 63 from the Doub reference to make a prior art showing of applicant’s claimed technique “wherein the device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner” (see this or similar, but not necessarily identical language in the independent claims).

Applicant respectfully asserts that the excerpt from the Doub reference relied upon by the Examiner merely discloses that “[i]f a time-out occurs while waiting for the reply signal to be received (block 310), the display 115 is disabled, the time-out counter 225 is reset (block 315) and the transmit signal is re-transmitted (block 305)” (emphasis added). However, the mere disclosure that the time-out counter is reset and the transmit signal is re-transmitted after a time-out occurs, as in Doub, fails to even suggest a technique “wherein the device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner” (emphasis added), as claimed by applicant.

-4-

In the Office Action dated 08/18/06, the Examiner asserted that “[a]pplicant does not contest that Doub teaches a device that is configured to periodically send the identifying signal” and that “[a]pplicant’s argument turns on where the identifying signal is sent utilizing a period of time which is configured based on the movements of an owner.” Further, the Examiner argued that “Doub teaches a handheld security system...[that] seeks to maintain security based on movements of an authorized user” which “is accomplished by transmitting an identifying signal between a control unit and a device” and that “[w]hen the authorized user has moved too far (and thus outside a range), a device may be at least partially non-functional to maintain security while the user is outside a range (e.g. Col 1, line 47 to Col 2, line 16).” The Examiner also argued that “Doub further teaches that the identifying signal is sent intermittently to reduce power consumption (Col 3, lines 58-61).”

The Examiner additionally argued that “[i]f knowing the movements of a user were the only factor, the identifying signal would be sent continuously... [and] power consumption would suffer” whereas “[i]f power consumption were the only factor, the identifying signal would never be sent... [and] the movements of the user would not be known and security would suffer.” Further, the Examiner argued that “Doub teaches sending the identifying signal intermittently (utilizing a period of time) which is configured based on the two considerations of movements of an authorized user and power consumption.”

Applicant respectfully disagrees with the Examiner’s arguments and asserts that the excerpts relied upon by the Examiner merely teach that “the display of the electronic device is enabled when the electronic device and the remote device are located within a first distance and the display is disabled when the remote device is located a second distance from the remote device, wherein the second distance is greater than the first distance” (Col. 1, lines 59-64 – emphasis added). Further, Doub discloses that “the remote device 110 uses the transmit signal to determine if the separation of the electronic device 100 and the remote device 110 exceeds the transmit range” and that “[i]f...the

-5-

separation exceeds the transmit range, the remote device 110 does not transmit the reply signal to the electronic device 100, thereby disabling the electronic device 100" (emphasis added). However, Doub's disclosure that the device transmits the signal to the remote device which then determines if the device exceeds the transmit range using the transmit signal before replying, simply fails to suggest that the "device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner" (emphasis added), as claimed by applicant. Clearly, in Doub, the device is transmitting the signal to the remote device regardless of the location of the remote device, which fails to suggest that the "device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner" (emphasis added), as claimed by applicant.

Further, applicant respectfully disagrees with the Examiner's argument that Doub teaches "sending the identifying signal intermittently (utilizing a period of time) which is configured based on the two considerations of movements of an authorized user and power consumption." Applicant respectfully asserts that the excerpts from Doub relied upon by the Examiner simply disclose that "the electronic device 100 transmits the transmit signal intermittently to reduce the amount of power used by the electronic device 100 and the remote device 110" (emphasis added). However, merely disclosing that the signal is transmitted intermittently to reduce power usage simply fails to even suggest that the "device is configured to periodically send the identifying signal utilizing a period of time which is configured based on movements of an owner" (emphasis added), as claimed by applicant. Clearly, nowhere in Doub is there any disclosure of how the intermittent transmission interval is itself configured, and therefore does not even suggest that "a period of time...is configured based on movements of an owner" (emphasis added), in the manner as claimed by applicant.

To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.